

HOUSE BILL No. 1222

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-4.7.

Synopsis: Telephone solicitations. Requires the consumer protection division of the office of the attorney general to publish a listing of telephone numbers of persons who do not wish to be solicited by telephone. Prohibits a telephone solicitor from calling a number that appears in the quarterly listing published by the division. Requires a telephone solicitor who makes an unsolicited telephone call to state the solicitor's name and business immediately upon telephone contact with a consumer. Establishes other requirements that a telephone solicitor must meet before a contract made under a telephone sales call is valid. Establishes civil remedies and criminal penalties for violations. Requires the consumer protection division of the office of the attorney general to notify Indiana residents of the rights and duties created by these provisions.

Effective: July 1, 2001.

Sturtz, Yount

January 9, 2001, read first time and referred to Committee on Commerce, Economic Development and Technology.

C
o
p
y



First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 1222

A BILL FOR AN ACT to amend the Indiana Code concerning consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-4.7 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
3 2001]:

4 ARTICLE 4.7. TELEPHONE SOLICITATION OF 5 CONSUMERS

6 Chapter 1. General Provisions

7 Sec. 1. This article does not apply to any of the following:

8 (1) A telephone call made in response to an express request of
9 the person called.

10 (2) A telephone call made primarily in connection with an
11 existing debt or contract for which payment or performance
12 has not been completed at the time of the call.

13 (3) A telephone call made to a person with whom the
14 telephone solicitor has had a business relationship within the
15 past eighteen (18) months.

16 (4) A telephone call made on behalf of a charitable
17 organization (as defined in Section 501 of the Internal



C
o
p
y

Revenue Code).

(5) A telephone call made on behalf of a political candidate or political party.

(6) A telephone call made on behalf of a business that makes calls:

(A) not otherwise described in this section; and

(B) to persons located not more than forty (40) miles from the primary business location of the business;

if the telephone solicitor provides the address of the primary business location of the business at the time the call is made.

Sec. 2. This article does not relieve a person from complying with any other applicable law.

Chapter 2. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "Consumer" means an actual or a prospective purchaser, lessee, or recipient of consumer goods or services.

Sec. 3. "Consumer goods or services" means real property or tangible or intangible personal property that is normally used for personal, family, or household purposes, including any of the following:

(1) Property intended to be attached to or installed on real property without regard to whether it is attached or installed.

(2) Cemetery lots.

(3) Timeshare estates.

(4) Services related to the property.

(5) Credit cards.

Sec. 4. "Division" refers to the consumer protection division of the office of the attorney general.

Sec. 5. "Doing business in Indiana" means making telephone sales calls to consumers located in Indiana whether the telephone sales calls are made from a location in Indiana or outside Indiana.

Sec. 6. As used in this chapter, "listing" refers to the no telephone sales solicitation listing published by the division under IC 24-4.7-3 that lists the names of persons who do not wish to receive telephone sales calls.

Sec. 7. As used in this chapter, "telephone number" means a residential, mobile, or telephone paging device telephone number.

Sec. 8. As used in this chapter, "telephone sales call" means a telephone call made to a consumer for the purpose of:

(1) soliciting a sale of consumer goods or services;

(2) soliciting an extension of credit for consumer goods or

C
o
p
y



services; or

(3) obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services or an extension of credit for such purposes.

The term includes a call made by use of automated dialing or recorded message devices.

Sec. 9. As used in this chapter, "telephone solicitor" means an individual, a firm, an organization, a partnership, an association, or a corporation, including affiliates and subsidiaries, doing business in Indiana.

Chapter 3. Duties of the Division

Sec. 1. (a) The division shall publish a quarterly listing of telephone numbers of Indiana consumers who request not to be solicited by telephone.

(b) The division shall place the telephone number of a telephone subscriber on the listing if the subscriber requests to be added to the listing according to a procedure established by the division.

(c) The division shall update the listing whenever the division receives a request from a subscriber.

Sec. 2. (a) The division shall provide the listing to a telephone solicitor upon request of the telephone solicitor as provided in this section.

(b) The division shall adopt rules under IC 4-22-2 to establish a fee for providing the listing to telephone solicitors. The fee established under this subsection may not exceed the amount necessary to reimburse the division for the costs of providing the listing to telephone solicitors.

(c) The division shall furnish the listing free of charge to an organization whose purpose is to create a list of names of Indiana consumers who do not want calls from telephone solicitors. The organization may disseminate the listing to its members instead of a member purchasing the listing from the division. However, before receiving the list, the organization must provide notice to the division of the name, address, and business telephone number of each of the organization's members to whom the list will be disseminated.

Sec. 3. The division shall investigate complaints received concerning violations of this article.

Sec. 4. The division shall notify Indiana residents of the rights and duties created by this article.

Sec. 5. (a) The division shall, after June 30 and before October 1 of each year, report to the regulatory flexibility committee

C
o
p
y



established under IC 8-1-2.6-4 on the following:

(1) For the state fiscal year ending June 30, 2002, the expenses incurred by the division in establishing the listing.

(2) The total amount of fees deposited in the fund during the most recent state fiscal year.

(3) The expenses incurred by the division in maintaining and promoting the listing during the most recent state fiscal year.

(4) The projected budget required by the division to comply with this article during the current state fiscal year.

(5) Any other expenses incurred by the division in complying with this article during the most recent state fiscal year.

(6) The total number of subscribers on the listing at the end of the most recent state fiscal year.

(7) The number of new subscribers added to the listing during the most recent state fiscal year.

(8) The number of subscribers removed from the listing for any reason during the most recent state fiscal year.

(b) The regulatory flexibility committee shall, before November 1 of each year, issue a report and recommendations to the legislative council concerning the information received under subsection (a).

Sec. 6. (a) The consumer protection division telephone solicitation fund is established for the purpose of the administration of this article and shall be used exclusively for this purpose.

(b) The fund shall be administered by the office.

(c) The division shall deposit all fees received under this article in the fund.

(d) Money in the fund at the end of a state fiscal year does not revert to the state general fund.

Sec. 7. The division may adopt rules under IC 4-22-2 to implement this article.

Chapter 4. Telephone Solicitations

Sec. 1. A telephone solicitor may not make or cause to be made a telephone sales call to a telephone number if that telephone number appears in the most current quarterly listing published by the division.

Sec. 2. A telephone solicitor who makes a telephone sales call to a telephone number shall immediately disclose the following information upon making contact with the person who is the subject of the telephone solicitation:

(1) The solicitor's true first and last name.

C
o
p
y



(2) The name of the business on whose behalf the telephone solicitor is soliciting.

Sec. 3. (a) This section does not apply to any of the following:

(1) A person obtaining consumer information for inclusion in directory assistance and telephone directories sold by telephone companies.

(2) An organization exempt under section 501(c)(3) or section 501(c)(6) of the Internal Revenue Code.

(b) A telephone solicitor or person who obtains consumer information that includes telephone numbers shall exclude the telephone numbers that appear on the division's most current listing.

Sec. 4. (a) This section does not apply to any of the following:

(1) A sale in which:

(A) no prior payment is made to a merchant;

(B) an invoice accompanies the goods or services; and

(C) a consumer is allowed seven (7) days to cancel the services or return the goods without obligation for payment.

(2) A contractual agreement that:

(A) requires payment; and

(B) allows the consumer at least ten (10) days to cancel the contract and receive a full refund of the payment.

(3) A sale regulated by 170 IAC 7-1.1-19.

(b) A contract made under a telephone sales call is not valid and enforceable against a consumer unless the contract complies with this section.

(c) A contract made under a telephone sales call must satisfy all of the following:

(1) The contract must be reduced to writing and signed by the consumer.

(2) The contract must comply with all other applicable laws.

(3) The contract must contain the name, address, and business telephone number of the seller, the total price of the contract, and a detailed description of the goods or services being sold.

(4) The description of goods or services as stated in the contract must be the same as the description principally used in the telephone solicitation.

(5) The contract must contain, in bold, conspicuous type immediately preceding the signature the words "you are not obligated to pay any money unless you sign this contract and return it to the seller".

C
o
p
y



(6) The contract may not exclude from its terms any oral or written representations made by the telephone solicitor to the consumer in connection with the transaction.

Sec. 5. (a) This section does not apply to any of the following:

(1) A transaction made in accordance with prior negotiations in the course of a visit by a consumer to a merchant that operates a retail business establishment that has a fixed, permanent location where consumer goods are displayed or offered for sale on a continuing basis.

(2) A transaction in which:

(A) a consumer may obtain a full refund for the return of undamaged and unused goods; or

(B) a consumer may, within seven (7) days after receipt of merchandise by a consumer, give a cancellation of services notice to a seller and return the merchandise, and the seller must process the refund within thirty (30) days after receipt of the returned merchandise.

(3) A transaction in which a consumer purchases goods or services under a television, radio, or print advertisement or a sample, brochure, or catalog of a merchant that contains:

(A) the name, address, and business telephone number of the merchant;

(B) a description of the goods or services being sold; and

(C) limitations or restrictions that apply to the offer.

(4) A transaction in which a merchant is a bona fide charitable organization.

(b) A merchant who engages a telephone solicitor to make or cause to be made a telephone sales call may not:

(1) make or submit a charge to a consumer's credit card account; or

(2) make or cause to be made any electronic transfer of funds; until the merchant receives from the consumer a copy of the contract, signed by the consumer, that complies with this chapter.

Sec. 6. A telephone solicitor must also comply with the following, if applicable:

(1) IC 24-5-12.

(2) IC 24-5-14.

Chapter 5. Civil Remedies

Sec. 1. A telephone solicitor who fails to comply with any provision of IC 24-4.7-4 commits a deceptive act that is actionable by the attorney general under IC 24-5-0.5-4(c) and that is subject to the penalties set forth in IC 24-5-0.5.

C
o
p
y



1 **Sec. 2. An action by the attorney general for a violation of**
 2 **IC 24-4.7-4 may be brought in the circuit or superior court of**
 3 **Marion County.**

4 **Chapter 6. Criminal Penalties**

5 **Sec. 1. A telephone solicitor who knowingly or intentionally**
 6 **violates:**

- 7 (1) IC 24-4.7-4-1;
 8 (2) IC 24-4.7-4-2; or
 9 (3) IC 24-4.7-4-3;

10 **commits a Class A misdemeanor. However, the offense is a Class**
 11 **D felony if the telephone solicitor has a prior unrelated conviction**
 12 **under this section.**

13 **Sec. 2. A telephone solicitor who knowingly or intentionally**
 14 **violates:**

- 15 (1) IC 24-4.7-4-4; or
 16 (2) IC 24-4.7-4-5;

17 **commits telephone solicitation fraud, a Class D felony.**

18 **SECTION 2. [EFFECTIVE JULY 1, 2001] (a) The definitions in**
 19 **IC 24-4.7-2, as added by this act, apply throughout this SECTION.**

20 **(b) Notwithstanding IC 24-4.7-3-1, as added by this act, the**
 21 **consumer protection division of the office of the attorney general**
 22 **shall have the listing of telephone numbers described in**
 23 **IC 24-4.7-3-1, as added by this act, in operation before January 1,**
 24 **2002.**

25 **(c) Not later than January 15, 2002, the division shall update the**
 26 **report required by IC 24-4.7-3-5, as added by this act, to cover the**
 27 **period from July 1, 2001, through December 31, 2001. The division**
 28 **shall provide not less than twenty-five (25) copies of the updated**
 29 **report to the legislative services agency. The legislative services**
 30 **agency shall distribute a copy of the updated report to each**
 31 **member of the regulatory flexibility committee not later than**
 32 **February 1, 2002.**

33 **(d) This SECTION expires July 1, 2002.**

C
o
p
y

